

No. 42751-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Russel Ford,

Appellant.

Grays Harbor County Superior Court Cause No. 11-1-00177-9

The Honorable Judge F. Mark McCauley

Appellant's Reply Brief

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ARGUMENT

THE TRIAL COURT SHOULD HAVE SUPPRESSED EVIDENCE SEIZED FOLLOWING A WARRANTLESS SEARCH OF MR. FORD'S BACKPACK .

In Washington, only actual authority to consent can justify a warrantless search based on such consent. *State v. Morse*, 156 Wash. 2d 1, 12, 123 P.3d 832, 837 (2005). “Apparent authority” does not apply under Article I, Section 7. *Id.*

Here, Ms. Alvarado did not have actual authority to consent to a search of Mr. Ford's backpack. See, e.g., *State v. White*, 141 Wash. App. 128, 136, 168 P.3d 459 (2007). Her ownership of the vehicle in which it was found did not empower her to consent to a search of his property. See, e.g., *State v. Rison*, 116 Wash. App. 955, 957-58, 961, 69 P.3d 362, 363 (2003). In fact, Ms. Alvarado did not even have apparent authority to consent to a search of the backpack, since a person of reasonable caution would have concluded that the backpack could have belonged to passenger Mr. Ford. *Id.* at 962.

Without elaboration, Respondent claims that *Rison* does not apply because it involved property found during a residential search. Brief of Respondent, p. 4. But the *Rison* court did not limit its holding.

Presumably, had the police found Mr. Rison's eyeglass case during a valid consent search of a vehicle, the same result would obtain.¹

Respondent's reliance on *Cantrell* is misplaced. Brief of Respondent, p. 2-3, citing *State v. Cantrell*, 124 Wash. 2d 183, 875 P.2d 1208 (1994). *Cantrell* involved two people with common authority over a vehicle. *Id.* Here, Ms. Alvarado and Mr. Ford did not share common authority over the backpack.

Nor does *Parker* help Respondent's argument. Brief of Respondent, pp. 3-4, citing *State v. Parker*, 139 Wash.2d 486, 987 P.2d 73 (1999). The *Parker* court held that mere presence at the scene of an arrest does not permit police to search a non-arrested person's effects. *Id.*, at 497-499. *Parker* did not address the "actual authority" requirement later articulated in *Morse* and *Rison*.

When police rely on consent to conduct a search—whether of a residence, an eyeglass case, a car, or a backpack—evidence discovered as a result must be suppressed unless the consenting party had actual authority to consent. *Morse*, *supra*; *Rison*, *supra*. Ms. Alvarado lacked such authority. Accordingly, the search of Mr. Ford's backpack was

¹ Nor does this argument distinguish *Morse*. The *Morse* court's articulation of the actual vs. apparent authority standard did not limit the nature of the property to be searched.

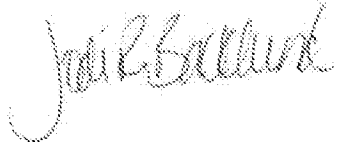
unlawful. Id. The conviction must be reversed, the evidence suppressed, and the case dismissed with prejudice. Id.

CONCLUSION

Mr. Ford's conviction must be reversed and the case dismissed.

Respectfully submitted on July 9, 2012,

BACKLUND AND MISTRY

A handwritten signature in cursive script, appearing to read "Jodi R. Backlund".

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Reply Brief, postage prepaid, to:

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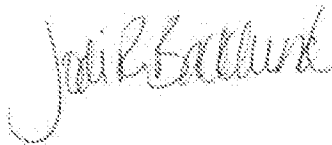
And to:

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And that I filed the Appellant's Reply Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on July 9, 2012.

A handwritten signature in cursive script, appearing to read "Jodi R. Backlund".

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BACKLUND & MISTRY

July 09, 2012 - 9:32 AM

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